

## **Misgendering is not a Freedom of Expression Matter**

**By Simon Petitjean**

*“Human rights, including protecting free expression and privacy, must be front and centre in efforts to regulate digital technologies, while helping ensure that online violence, disinformation, hate speech and incitement to hatred are stopped in their tracks. We must actively ensure that the benefits of digital technologies and artificial intelligence are accessible to those most in need, to help reduce global inequalities and close digital divides.” Volker Türk, United Nations High Commissioner for Human Rights<sup>1</sup>*

Hate speech and transphobia cannot be normalised online in the name of freedom of expression. This comes into contradiction with the promise that “all human beings are born free and equal.” Yet, censorship is not a solution either. The cases brought forward by the Oversight Board must be placed within this framework, and the two cases must absolutely be analysed as part of a wider phenomenon, present in the US and globally, online and offline, of widespread anti-gender and anti-trans attacks amplified for political and economic gains. We need human-centred and contextualised solutions, accompanied by responsible critical debate, education and participation of all stakeholders, most importantly, those who are the most marginalised.

### **- The impact of misgendering on trans people**

Misgendering is the practice of referring to a trans person with the wrong gender and/or former name which they have chosen not to use anymore. Calling a transgender person by their former name and without their consent (referred to as “deadnaming”) shows disrespect for their privacy, dignity, and undermines their true authentic self. In terms of impact, studies show that trans people, including youth, who have been misgendered face increased levels of psychological stress, depression<sup>2</sup> and even attempted suicide<sup>3</sup>.

The focus here is not about accidentally getting someone’s pronouns or name wrong, or people who wish to understand transidentity. Rather, it is the deliberate and targeted acts of hate and harassment towards a specific group of people (trans people), rooted in systemic gender identity discrimination and part of a widespread trend. As the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted, these are vicious, coordinated, highly sexualized and malicious attacks on gender non-conforming people<sup>4</sup>. Furthermore, targeted misgendering has been identified by the US Anti-Defamation League (ADL) and other civil society groups, including GLAAD<sup>5</sup>, Human Rights Campaign<sup>6</sup> and Media Matters, as a form of hate speech<sup>7</sup>, which has been recognised by most other social media platforms.

### **- The impact of misgendering on international human rights**

Yet, Meta has informed the Oversight Board that neither posts are deemed to violate the company’s Hate Speech policy. It also added that even if the post in the second case could constitute a call for exclusion, it would still be kept up under the newsworthiness allowance,

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<sup>1</sup> <https://www.ohchr.org/en/statements-and-speeches/2024/09/human-rights-are-our-mainstay-against-unbridled-power>

<sup>2</sup> <https://psycnet.apa.org/doiLanding?doi=10.1037%2Fsah0000070>

<sup>3</sup> <https://www.thetrevorproject.org/survey-2021/>

<sup>4</sup> <https://documents.un.org/doc/undoc/gen/g22/323/44/pdf/g2232344.pdf>

<sup>5</sup> <https://glaad.org/releases/tiktok-will-expressly-prohibit-misgendering-deadnaming-misogyny-and-promotion-so-called/>

<sup>6</sup> <https://x.com/HRC/status/1648370811294875649>

<sup>7</sup> <https://glaad.org/social-media-platform-policies-targeted-misgendering-deadnaming-hate-speech/>

given “transgender people’s access to bathrooms that correspond to their gender identity is the subject of considerable political debate in the United States.”

This argument mirrors a general tendency to invoke “protecting freedom of expression” in cases of transphobia notably. Transidentity would be such a contested issue, difficult for the general population to accept, that it would require public debates between those against and those in favour. The basis for this argument is extremely dangerous and harmful, objectifying trans people, stripping them of dignity and rights, for the purpose of advancing public understanding and knowledge. Indeed, allowing public discussions that openly misgender trans people in the public sphere ‘under the newsworthiness allowance’ contributes to a climate of fear and self-censorship, including for trans people. Moreover, it is based on the false narrative that transidentity is a product of contemporary times and has not always existed<sup>8</sup>. This comes at the cost of trans people’s dignity and undermines the universality and inalienability of human rights<sup>9</sup>. Additionally, it strips down people’s own responsibility, as human beings, to respect one another. Freedom of opinion and expression is too often interpreted in such a way that the first part of Article 1 of the Declaration of Human Rights (“All human beings are born free and equal in dignity and rights”) is dissociated from the second (“They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”). The conception of freedom becomes disconnected from the necessary conception of people as moral human beings, with personal responsibility, and human dignity loses its significance. Article 19 of the International Covenant on Civil and Political Rights also includes the condition to “respect of the rights or reputations of others”<sup>10</sup> and must thus not be interpreted as a licence to use offending language and to disseminate dignity-offending content, contributing to relativist positioning on universal human rights.

#### **- The internet is not a safe space for trans people**

For many LGBTQIA+ persons, the digital sphere represents an innovative and key way of connecting with others and creating supportive communities, especially in difficult socio-political and private contexts, such as inhospitable countries or family settings. The Internet is also a crucial platform to advocate for and advance equal rights for all<sup>11</sup>, and for groups to organise and connect within and across national boundaries<sup>12</sup>.

However, the internet has become an increasingly contested and political arena in which transphobic attacks have only been worsening and increasing in recent years<sup>13</sup>. Trans people face a large spectrum of online discrimination and violence including misgendering but also deadnaming, harassment, bullying, doxing and more.

#### **- The inextricability of online and offline worlds**

It is crucial to analyse misgendering as part of a wider anti-trans and anti-rights movement including a wide array of attacks on individuals as well as their rights, online and offline. Research has revealed how much hostile anti-trans rhetoric impacts trans people offline.<sup>14</sup> Not only trans people but all marginalised communities. Indeed, online hate speech has been linked to a global rise in real-world violence<sup>15</sup> impacting historically marginalised

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<sup>8</sup>[https://gate.ngo/wp-content/uploads/2024/02/GATE-ILGA-Europe-TGEU\\_Trans-Rights-are-Human-Rights-Dismantling-misconceptions\\_2021\\_EN.pdf](https://gate.ngo/wp-content/uploads/2024/02/GATE-ILGA-Europe-TGEU_Trans-Rights-are-Human-Rights-Dismantling-misconceptions_2021_EN.pdf)

<sup>9</sup> <http://www.e-ir.info/2011/07/30/human-rights-in-the-context-of-international-relations-a-critical-appraisal/>

<sup>10</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>11</sup> <https://lnkd.in/eaisbq5H>

<sup>12</sup> [https://ilga.org/wp-content/uploads/2024/02/Accessing\\_connection\\_bridging\\_LGBTI\\_digital\\_divide.pdf](https://ilga.org/wp-content/uploads/2024/02/Accessing_connection_bridging_LGBTI_digital_divide.pdf)

<sup>13</sup> <https://gate.ngo/knowledge-portal/news/crisis-communications-toolkit-responding-to-anti-gender-extremism/>

<sup>14</sup> [https://ilga.org/wp-content/uploads/2024/02/Accessing\\_connection\\_bridging\\_LGBTI\\_digital\\_divide.pdf](https://ilga.org/wp-content/uploads/2024/02/Accessing_connection_bridging_LGBTI_digital_divide.pdf)

<sup>15</sup> <https://www.cfr.org/background/hate-speech-social-media-global-comparisons>

communities<sup>16</sup>. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has analysed the gendered aspects of online space, noting the ways in which inequalities and marginalisation in the material world are connected and amplified by online violence and discrimination. Gendered disinformation (the spread and perpetuation of lies and harmful stereotypes about women and gender-nonconforming persons) has strengthened and is affecting LGBTQ+ communities disproportionately, further marginalising them<sup>17</sup>.

Moreover, this is being amplified by political representatives. Research shows how anti-trans rhetoric, including by powerful public figures, gains short-term political points. These attacks are part of what some scholars and advocates call the “gender ideology playbook”, in which opponents to rights and equality infuse fear of “a broad range of demands such as the right to abortion, sexual orientation and gender identity, to diverse families, education in gender and sexuality, HIV prevention and sex work”. The implications for human rights are very broad. Indeed, gendered disinformation attacks not only individuals but also their collective struggles by seeking to delegitimize feminism and gender rights<sup>18</sup>.

If some countries have shown political and legal progress, many others have been regressing including in terms of gender-affirming care, trans-inclusive athletic regulations or bathroom policies, often based on false allegations of sexual violence in the trans community and “transgenderism” as a radical ideology. Therefore, the impact on policies, including for the protection of the trans community, is real and direct. In 2021, in the US alone, there was a large number of bills introduced in state legislatures targeting trans people, focusing on restricting the rights of trans youth across sports, healthcare, and education. And 2022 was a record-setting year for state legislation targeting LGBTQ adults and children, with nearly 150 anti-LGBTQ bills proposed (most targeting transgender people and youth)<sup>19</sup>. This trend is being observed all around the globe, spread by religious fundamentalism combined with political and economic opportunism<sup>20</sup>.

#### **- Recommendations on Moving Forward**

Currently, of the six major platforms – Meta’s Facebook as well as TikTok, YouTube, X, Instagram and Threads – only TikTok clearly prohibits targeted misgendering and deadnaming in its hate and harassment policy<sup>21</sup>. Yet, there are many other platforms with such policies, including Tumblr, Pinterest, NextDoor, Discord, Post, Spoutible, Snap, and IFTAS.

It is crucial to make digital spaces safe for all. It is important to note that measures to do so should not lead to restrictions of freedom of expression beyond what is permissible, necessary and proportionate under international law<sup>22</sup>. Freedom of opinion and expression is essential for all individuals’ political, social and economic empowerment, for preserving democracy and for promoting the transformative changes that gender justice demands.<sup>23</sup>

The recommendation is that Meta must close its current loopholes: targeted misgendering of public figures is obviously anti-trans hate speech. Moreover, the fact that the appeal was rejected including because the targeted people themselves did not ask Meta implies restrictions for those who may wish to act in solidarity with marginalised groups. Meta must stay committed to maintaining safe environments for all trans people and their allies, and

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<sup>16</sup> <https://glaad.org/social-media-platform-policies-targeted-misgendering-deadnaming-hate-speech/>

<sup>17</sup> <https://genderit.org/resources/machine-fosters-shame-weaponisation-sexuality-anti-gender-anti-democracy-disinformation-0>

<sup>18</sup> <https://documents.un.org/doc/undoc/gen/n23/233/65/pdf/n2323365.pdf>

<sup>19</sup> <https://freedomforallamericans.org/legislative-tracker-anti-lgbtq-bills/>

<sup>20</sup> <https://genderit.org/resources/machine-fosters-shame-weaponisation-sexuality-anti-gender-anti-democracy-disinformation-0>

<sup>21</sup> <https://glaad.org/tiktok-will-expressly-prohibit-misgendering-deadnaming-misogyny-conversion-therapy/>

<sup>22</sup> <https://www.ohchr.org/sites/default/files/Documents/Press/Regulating-online-content-the-way-forward.pdf>

<sup>23</sup> <https://documents.un.org/doc/undoc/gen/n23/233/65/pdf/n2323365.pdf>

should be able to recognize this targeted harassing and abusive behaviour as harassment and abuse, thus having unambiguous definitions within its policies and enforcing those accordingly.

Meta must incorporate into its hateful conduct policies the explicit prohibition against targeted misgendering of all transgender people. As described above, this recommendation is key in the current US and global contexts where anti-trans online rhetoric and attacks are so prevalent and harmful, spreading into offline violence and discrimination.<sup>24</sup>

Finally, hate speech does not exist in a vacuum; it is a symptom of deeply rooted discrimination and violence within a society. In addition to addressing hate speech as a phenomenon in itself, including its impact on victims and societies, it is important to address issues which may drive hate speech. Social media companies must thus be focused on strengthening social cohesion through building safer and more inclusive spaces (online and offline), protect and expand civic space and address underlying tensions. This includes working with local government, social communicators and human rights defenders notably to develop counter narratives and take down hate speech, creating opportunities for education and countering disinformation through access to accurate information as well as greater dialogue and responding to grievances, violent extremism, mental health and psychosocial support.<sup>25</sup>

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<sup>24</sup> <https://glaad.org/social-media-platform-policies-targeted-misgendering-deadnaming-hate-speech/>

<sup>25</sup> [https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/pbf\\_tip\\_sheet\\_on\\_hate\\_speech\\_final\\_rev\\_16\\_aug\\_2024.pdf](https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/pbf_tip_sheet_on_hate_speech_final_rev_16_aug_2024.pdf)